

NASD Notice to Members 99-59

NASD Will No Longer Impose Censures For Some Violations

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Executive Representatives
- ☐ Government Securities
- ☐ Institutional
- ☐ Insurance
- ☐ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

On June 10, 1999, the National Adjudicatory Council (NAC) adopted a new policy that provides that censures will no longer be imposed for certain designated violations when the total monetary sanction is \$5,000 or less, and when bars or suspensions are imposed. Members are directed to attach this *Notice to Members* as an amendment to their *NASD Sanction Guidelines*.

Questions concerning this new policy may be directed to Shannon Lane, Attorney, Office of General Counsel, NASD Regulation, Inc., at (202) 728-6904.

Background

The National Association of Securities Dealers, Inc. (NASD® or Association) may impose sanctions on member firms and persons associated with member firms for violations of the federal securities laws, rules of the Municipal Securities Rulemaking Board (MSRB), and the Association's rules.

When disciplining members for such violations, the NASD may impose any fitting sanction including monetary sanctions (e.g., fines, disgorgement, and restitution) and non-monetary sanctions (e.g., censures, suspensions, bars, and expulsions). The *NASD Sanction Guidelines* recommend a range of monetary and non-monetary sanctions for particular violations.

This *Notice to Members* is issued to inform the membership of a new censure policy adopted by the NAC at its June 10, 1999 meeting. Under this new policy, the NASD has identified certain violations for which it will no longer impose censures when relatively low monetary sanctions are imposed. Accordingly, the NASD will not impose censures when the total monetary sanction for any disciplinary action, regardless of the number of violations alleged, is \$5,000 or less (including any fine, or order of restitution or disgorgement)¹ and the violation(s) at issue consist solely of one or more of the violations listed below.²

Violations that will no longer be subject to censure when monetary sanctions of \$5,000 or less are imposed

Quality of Markets violations

- ACT Violations - Rule 6100 Series
- Backing Away
- Best Execution and Interpositioning
- Confirmation of Transactions (SEC Rule 10b-10)
- ECN Display Rule
- Failure to Display Minimum Size in Nasdaq® Securities, CQS Securities, and OTC Bulletin Board Securities
- Fixed Income Pricing System - Trade Reporting and Participant and Quotation Obligations
- Limit Order Display Rule
- Limit Order Protection Rule
- Locked/Crossed Market
- Options Exercise and Positions Limits
- Options Positions Reporting - Late Reporting and Failing to Report
- Passive Market Making
- SelectNetSM Text Messages
- Short Sale Violations
- SOESSM Rules
- Trades Executed During a Trading Halt
- Trade Reporting - Late Reporting; Failing to Report; Inaccurate Reporting

Violations that will no longer be subject to censure when monetary sanctions of \$5,000 or less are imposed (*continued*)

Qualification and Membership violations

- Continuing Education - Firm Element
- Continuing Education - Regulatory Element
- Registration Violations

Reporting/Provision of Information violations

- FOCUS reports - Late Filing
- Form BD-Y2K Reports - Late Filing
- Forms U-4/U-5 - Late Filing; Failure to File; Inaccurate Forms or Amendments
- MSRB Rule G-36 - Untimely Filing of Offering Documents With MSRB; Late Filing; Failure to File
- MSRB Rules G-37/G-38 Reporting - Late Filing; Failing to File
- Regulation M Reports - Late Filing; Failing to File
- Reportable Events Under Conduct Rule 3070 - Late Reporting; Failing to Report; Inaccurate Reports
- Request for Automated Transmission of Trading Data (Blue Sheets) - Failure to Respond in a Timely and Accurate Manner

Financial and Operational Practices violations

- Consumer Protection Rule
- Net Capital Violations
- Recordkeeping Violations
- Violations of SEC Rule 17a-11 (Notification Provisions for Broker/Dealers)

Supervision violation

- Supervisory Procedures - Deficient Written Supervisory Procedures³

In addition, because bars and suspensions are severe sanctions that already signify the Association's official disapproval of a respondent's conduct, censures will not be imposed in cases where the respondent is barred or suspended in any capacity regardless of the nature of the violation.

The new policy applies to all Letters of Acceptance, Waiver, and Consents and Offers of Settlement executed by respondents beginning on June 11, 1999, and to all NAC

and Office of Hearing Officer decisions decided and issued on or after June 11, 1999.

Members are directed to attach this *Notice to Members* as an amendment to their *NASD Sanction Guidelines*.

Endnotes

¹Censures will be imposed, however, when fines above \$5,000 are reduced or eliminated due to a respondent's demonstrated inability to pay or bankruptcy.

²This list largely consists of violations as found in the *NASD Sanction Guidelines*. To the extent that a particular guideline indicates that its application is appropriate for violations of an analogous rule, violations of that analogous rule will not be subject to censure when monetary sanctions of \$5,000 or less are imposed.

³In addition, censures will not be imposed for violations disposed of under the Minor Rule Violation Plan pursuant to NASD Procedural Rule 9216(b) and IM-9216.

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